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10 **BEFORE THE PRESIDING DISCIPLINARY JUDGE**
11 **OF THE SUPREME COURT OF ARIZONA**

12 **IN THE MATTER OF MEMBERS OF) PDJ – 2011-9002**
13 **THE STATE BAR OF ARIZONA,)**

14 **Rachel R. Alexander,**
15 **Bar No. 020092**

16 **Respondent.**

17 **RACHEL ALEXANDER'S**
18 **PROPOSED FINDINGS OF FACT**
19 **AND CONCLUSIONS OF LAW**

20 Respondent Rachel Alexander hereby offers her proposed findings of fact and
21 conclusions of law as they relate to the charges brought against her by the Independent Bar
22 Counsel.

23 **I. GENERAL FACTUAL FINDINGS.**

24 1. Rachel Alexander is an attorney licensed by the State Bar of Arizona since 2000.
25 October 20, 2011 Trial Testimony, at p. 5, ll.10-15.

26 2. In December 2009, Alexander was employed by the Maricopa County Attorneys'
27 Office ("MCAO") as a special assistant/deputy county attorney. *Id.*, at p. 11, ll. 12-14; p. 13,
28 ll. 3-22.

3. At that time Alexander was assigned to the Executive Division. *Id.*

1 4. Alexander's supervisor was Jeff Trudgian. October 12, 2011 Trial Testimony, at
2 p. 91, l. 19-P. 92, l. 4.

3 5. Jeff Trudgian reported to Mark Faull. *Id.*

4 6. Mark Faull reported to Phil MacDonnell. *Id.*, at p. 84, ll. 6-10.

5 7. Phil MacDonnell reported to elected Maricopa County Attorney Andrew
6 Thomas.

7 8. During her time in the Executive Division, Alexander was only occasionally
8 asked to do projects directly by Thomas. Trial Exhibit 29; October 20, 2011 Trial Testimony,
9 at p. 14, l. 16 to p. 16, l. 10.

10 9. In December 2008, the Maricopa County Board of Supervisors began the process
11 of stripping the Civil Division from the MCAO. Trial Exhibit 57; September 14, 2011 Trial
12 Testimony, at p. 59, l. 8 to p. 61, l. 18.

13 10. That process was completed in May 2009, when the MCAO's budget was
14 slashed by six million dollars. Exhibit 102.

15 11. Phil MacDonnell described this as a "brutal" act that resulted in the MCAO
16 losing nearly all of its experienced civil litigators. September 15, 2011 Trial Testimony at p.
17 173, ll. 6-19.

18 12. On or about December 1, 2009, Lisa Aubuchon commenced the matter titled
19 *Arpaio, et al. v. Maricopa County Board of Supervisors, et al.*, U.S. District Court, District of
20 Arizona, Case No. 2:09-cv-02492-GMS (the "RICO Matter") by filing a complaint.

21 13. The original complaint in the RICO Matter asserted a single cause of action
22 pursuant to 18 USC § 1962 *et seq.* (the "RICO Statute").

23 14. Alexander did not know about the RICO Matter until after it was filed. October
24 20, 2011 Trial Testimony, at p. 29, ll. 6-15.

25 15. Shortly thereafter, Alexander was asked to research whether it was appropriate
26 for a prosecutor to civilly sue individuals she was also prosecuting criminally. October 20,
27 2011 Trial Testimony at p. 25, l. 16 to p. 26, l. 24.

1 16. Alexander located research that, although not dispositive, suggested that a lawyer
2 should not do both. *Id.*

3 17. On or about December 11, 2009, Thomas asked Alexander to work on the RICO
4 Matter. Trial Exhibit 59.

5 18. At the time, Alexander was relatively inexperienced in complex commercial
6 litigation and initially questioned whether she was the right choice for the assignment because
7 of, among other reasons, her lack of civil litigation experience. October 20, 2011, Trial
8 Testimony at p. 29, l. 19 to p. 30, l. 15.

9 19. Thomas told Alexander that the RICO Matter was important because of potential
10 corruption in Maricopa County government. *Id.*

11 20. Thomas also told Alexander that she would have the help of other experienced
12 lawyers to advance the RICO Matter. *Id.*

13 21. Based on these assurances, Alexander agreed to work on the RICO Matter. *Id.*

14 22. Thomas formally assigned Alexander to the RICO Matter via a December 11,
15 2009 email. Trial Exhibit 59.

16 23. Faull questioned the assignment of the RICO Matter to Alexander because of
17 Alexander's lack of civil litigation experience. Trial Exhibit 169; October 12, 2011 Trial
18 Testimony at p. 89, l. 8 to p. 90, l. 9.

19 24. Faull expressed these reservations to MacDonnell. *Id.*

20 25. MacDonnell forwarded Faull's concerns to Thomas. *Id.*

21 26. Thereafter, Alexander was reassigned to the Civil Forfeiture Bureau of the
22 MCAO.

23 27. Alexander was assigned to the Civil Forfeiture Bureau to screen her off from
24 Lisa Aubuchon and other criminal lawyers who were criminally prosecuting some of the
25 Defendants in the RICO Matter.

26 28. Reassigning Alexander in this manner comported with the MCAO's screening
27 procedures that required MCAO civil attorneys to refrain from communicating with MCAO
28 criminal attorneys. October 12, 2011 Trial Testimony, at p. 102, l. 25 to p. 103, l. 6.

1 29. Although this screening procedure had not been reduced to a formal written
2 policy, it had long been the policy and practice of the MCAO from long before Thomas was
3 elected County Attorney. *Id.*

4 30. The assignment of Alexander to the Civil Forfeiture Bureau was also done so
5 that Alexander would be able to work with and under the supervision of the Bureau Chief,
6 Peter Spaw. October 20, 2011, Trial Testimony at p. 29, l. 19-p. 30, l. 15.

7 31. Spaw has been a civil litigator for nearly thirty years in both private and public
8 practice. October 17, 2011 Trial Testimony, at p. 121, l. 13 to p. 122, l. 25.

9 32. Spaw was at one time a certified specialist in wrongful death and personal injury
10 litigation. *Id.*

11 33. Spaw had substantial experience in state racketeering actions, which is an area of
12 the law that shares some similarities with RICO actions. *Id.* at p. 123, l. 1 to p. 125, l. 3.

13 34. After the stripping of the MCAO's Civil Division, Spaw was one of the most
14 experienced civil litigators left in the MCAO.

15 35. Prior to the filing of the RICO Matter, Spaw had been consulted by the Maricopa
16 County Sheriff's Office ("MCSO") Chief Deputy, David Hendershott, about the possibility of
17 the MCSO and/or Sheriff Arpaio bringing a racketeering action against the members of the
18 Maricopa County Board of Supervisors. October 17, 2011 Trial Testimony, at p. 125, l. 25 to
19 p. 128, l. 17.

20 36. Spaw also consulted with Eric Dowell, a lawyer with the law firm of Ogletree
21 Deakins, about the possibility of the MCSO bringing such an action. *Id.*

22 37. Both Dowell and Spaw advised Chief Hendershott against commencing such an
23 action. *Id.*

24 38. Spaw never told Alexander about the advice he and Dowell gave to Hendershott.
25 October 18, 2011 Trial Testimony, at p. 97, l. 23 to p. 98, l. 7; November 1, 2011 Trial
26 Testimony, at p. 41, l. 24 to p. 42, l. 8.

1 39. At the time of Alexander's assignment to be supervised by Spaw, Faull met with
2 Spaw to ensure that Spaw was aware of Alexander's lack of civil litigation experience. October
3 12, 2011 Trial Testimony, at p. 115, l. 22 to p. 117, l. 4.

4 40. Faull told Spaw that he was required to provide Alexander with hands-on
5 guidance and close supervision because of her inexperience and the complexity of the RICO
6 Matter. *Id.*

7 41. Faull also expected Spaw, as a bureau chief and MCAO supervisor, to be
8 familiar with Alexander's assignments, aware of her skill set and experience level, provide
9 training and mentoring "on the job," and make sure that Alexander complied with all rules of
10 ethics. *Id.*, at p. 115, l. 1-21.

11 42. Spaw knew at the time that the rules of ethics and the policies of the MCAO
12 required him to provide appropriate supervision to Alexander such that her work was in
13 compliance with the rules of ethics. October 18, 2011 Trial Testimony at p. 104, l. 1-18.

14 43. Spaw, however, did not discuss ethical issues with Alexander. October 18, 2011
15 Trial Testimony, at p. 149, l. 19 to p. 150, l. 2.

16 44. In addition to Spaw, pursuant to the direction of Thomas and Sally Wells,
17 Dowell and other lawyers with Ogletree Deakins and Assistant County Attorney Jeff
18 Duvendack were assigned to work with Alexander on the RICO Matter. Trial Exhibit 169;
19 182; October 20, Trial Testimony, at p. 33, ll. 11-23; November 1, 2011 Trial Testimony at p.
20 44, l. 20 to p. 46, l. 21.

21 45. Beginning on or about December 24, 2009, the various defendants in the RICO
22 Matter began to file motions to dismiss the action pursuant to Fed. R. Civ. P. 12(b).

23 46. On or about December 28, 2009, Spaw arranged for a conference call to discuss
24 the status of the RICO Matter and to divide up the work that needed to be done. November 1,
25 2011 Trial Testimony, at p. 42, l. 22 to p. 44, l. 2.

26 47. During that call, Alexander made a statement that she believed certain defendants
27 named in the RICO Matter had knowledge of a memorandum that was prepared by another
28

1 defendant in the RICO Matter. October 17 Trial Testimony, at p. 144, l. 1 to p. 145, l. 19;
2 October 18, 2011 Trial Testimony, at p. 104, l. 19 to p. 107, l. 16.

3 48. Spaw and Dowell corrected Alexander and stated that there was no evidence to
4 support that statement. *Id.*

5 49. Alexander did not object or otherwise respond to Spaw and Dowell's statement.
6 *Id.*

7 50. During that call it was decided that an amended complaint be prepared. *Id.*;
8 November 1, 2011 Trial Testimony, at p. 43, ll.1-8.

9 51. On or about December 29, 2009, additional motions to dismiss were filed.

10 52. Thereafter, Alexander reviewed the motions to dismiss and began to prepare a
11 comprehensive list of the issues raised in the filed motions and the various legal issues that
12 would have to be researched and addressed. Trial Exhibit 18; October 18, 2011 Trial
13 Testimony at p. 106, l. 23 to p. 110, l. 17.

14 53. Alexander forwarded that list to Spaw, Dowell, and others. *Id.*

15 54. In response, on or about December 31, 2009, Spaw sent Alexander an email
16 instructing her that rather than completing legal research, she needed to access the documents
17 comprising the factual basis for the RICO Matter. *Id.*

18 55. Upon receiving this email, Alexander made efforts to locate the documents that
19 comprised the factual basis for the RICO Matter. *Id.*

20 56. Alexander did this by reaching out first to Thomas. *Id.*

21 57. Thereafter, at Thomas' direction, she contacted Wells. Trial Exhibit 182; October
22 20, 2011 Trial Testimony, at p. 57, l. 13-22; November 1, 2011 Trial Testimony, at p. 46, l. 22
23 to p. 48, l. 5.

24 58. Alexander had previously obtained documents from Aubuchon that Aubuchon
25 told her comprised the "file." October 20, 2011 Trial Testimony at p. 50, l. 9 to p. 51, l. 21.

26 59. With the assistance of Wells, Alexander and Spaw obtained access to hundreds
27 of electronically stored documents that Alexander was told supported some of the factual
28

1 allegations contained in the complaint in the RICO Matter. October 20, 2011 Trial Testimony,
2 at p. 57, l. 13-22.

3 60. Alexander also talked to Thomas and other MCAO attorneys about events they
4 had observed related to the factual allegations contained in the RICO Matter. October 20, 2011
5 Trial Testimony, at p. 69, ll. 9-22; November 2, 2011 Trial Testimony at p. 64, l. 13 to p. 65, l.
6 1.

7 61. Alexander began to work on a timeline based on the documents she reviewed and
8 the conversations she had. Trial Exhibit 127.

9 62. Spaw prepared the initial draft of the amended complaint, which he forwarded to
10 Thomas and Alexander on or about January 7, 2010. Trial Exhibits 447 & 448; October 20,
11 2011 Trial Testimony at p. 49, l. 4 to p. 50, l. 16; November 2, 2011 Trial Testimony at p. 49,
12 l. 4 to p. 51, l. 2.

13 63. Spaw made the decision in that initial draft to effectively “cut and paste” the
14 original complaint into the draft of the amended complaint. *Id.*

15 64. Alexander then began work on portions of the proposed amended complaint
16 originally drafted by Spaw.

17 65. In the interim, Spaw met with Thomas on several occasions to discuss the RICO
18 Matter, including having lunch with him at the restaurant Tom’s Tavern on January 5, 2010.
19 October 17, Trial Testimony, at p. 146, l. 18 to p. 147, l. 25.

20 66. Alexander was not included in those meetings. November 2, 2011 Trial
21 Testimony, at p. 44, ll. 3-19.

22 67. During those meetings, Spaw continued to express his concerns with the RICO
23 Matter.

24 68. Neither Spaw nor Thomas told Alexander about Spaw’s concerns.

25 69. While she was working on the proposed amended complaint, Alexander
26 routinely consulted with Spaw. November 2, 2011 Trial Testimony, at p. 42, ll. 9-21

27 70. Spaw would then give Alexander advice and direction.

28 71. Alexander followed Spaw’s direction.

1 72. On or about January 6, 2009, Spaw told Alexander that the proposed amended
2 complaint depended on documents demonstrating that the mail had been used to create a
3 conflict and to strip the MCAO of its civil division. Trial Exhibit 445.

4 73. Spaw gave this instruction because he believed the use of the mail for improper
5 purposes constituted a predicate act under the federal RICO statute. *Id.*; October 18, 2011 Trial
6 Testimony, at p. 117, ll. 8-17.

7 74. In this regard, Spaw had crafted the rubric "Peel-Steal-and-Seal," which was
8 used in the proposed amended RICO Complaint to set forth a context for the factual basis of
9 the RICO complaint. October 18, 2011 Trial Testimony, at p. 120, l. 23 to p. 121, l. 2.

10 75. Alexander continued to work on the proposed amended complaint until on or
11 about January 11, 2010, when Spaw told her to stop working on the proposed amended
12 complaint and begin working on a response to the various motions to dismiss. Trial Exhibit
13 407.

14 76. When Spaw told Alexander to stop working on the proposed amended complaint,
15 it had been approximately one month since she had been asked by Thomas to work on the
16 RICO Matter.

17 77. When Spaw told Alexander to stop working on the proposed amended complaint,
18 it had been nineteen days since she had filed a motion to substitute in as counsel for Aubuchon.

19 78. When Spaw told Alexander to stop working on the proposed amended complaint,
20 it had been thirteen days since the conference call with Spaw, Dowell, Duvendack, and others.

21 79. Alexander followed Spaw's direction and began to work on a response to the
22 motions to dismiss. November 2, 2011 Trial Testimony at p. 52, l. 18 to p. 53, l. 17.

23 80. Thereafter, Spaw and Thomas revised and finalized the proposed amended
24 complaint. *Id.*; Trial Exhibit 449.

25 81. In revising the proposed amended complaint, Spaw accepted some changes made
26 by Alexander, but rejected others. Trial Exhibit 403; October 18, 2011 Trial Testimony at p.
27 130, l. 18 to p. 131, l. 11.

1 82. Because the matter was to be filed electronically via the United States District
2 Court's electronic court filing ("ECF") system, the proposed amended complaint was not
3 signed via a handwritten signature.

4 83. Instead, Spaw caused Alexander's name to be typed into the proposed amended
5 complaint and filed it using his assigned ECF password and login. October 18, 2011 Trial
6 Testimony at p. 131, ll. 12-15.

7 84. Pursuant to ECF rules, the use of an attorney's assigned ECF password and login
8 constitutes that lawyer's confirmation that a filed document comports with Fed. R. Civ. P. 11
9 and is therefore well-founded in law and fact. Trial Exhibit 358.

10 85. Because the time to amend the complaint as of right had expired, and some of
11 the defendants had filed responsive pleadings, Plaintiffs were not free to amend the complaint.
12 Fed. R. Civ. P. 15.

13 86. Instead, Plaintiffs needed either leave of court or the agreement via stipulation of
14 the Defendants. *Id.*

15 87. Neither was obtained and, as a result, the proposed amended complaint was
16 never filed with the U.S. District Court. Trial Exhibit 364.

17 88. At the time that Spaw told Alexander to stop working on the proposed amended
18 complaint and to begin working on the response to the motions to dismiss, Spaw instructed
19 Alexander to prepare and deliver to him for review a comprehensive outline of her portions of
20 the response. Trial Exhibit 407.

21 89. In that regard, Spaw had assigned Alexander to work on responding to the
22 "Judges'" motion to dismiss, and assigned to himself the response to arguments made by all
23 defendants regarding standing and the sufficiency of the pleading. Trial Exhibit 407.

24 90. Alexander followed Spaw's instruction. November 2, 2011 Trial Testimony, at p.
25 54, l. 9 to p. 55, l. 18.

26 91. With Spaw's assistance and guidance, Alexander prepared portions of what
27 would become a comprehensive response to the various motions to dismiss. *Id.*

1 92. Alexander provided her work to Spaw and Thomas for suggestions, guidance,
2 and advice. Trial Exhibit. 456.

3 93. Alexander followed the advice and guidance of Spaw and Thomas.

4 94. The response to the various motions to dismiss was required to be filed by
5 Friday, January 29, 2010. Trial Exhibits 364 & 458.

6 95. On or about Monday, January 25, 2010, Spaw instructed Alexander that final
7 versions of her portions of the response were to be given to him by Tuesday, January 26, 2010.
8 Trial Exhibits 396 & 458; October 18, 2011 Trial Testimony at p. 145, l. 17 to p. 149, l. 18.

9 96. At that time, Spaw told Alexander that he had finished his portions and that when
10 he received Alexander's portions he would incorporate them into a draft of the complete
11 response for further review by Spaw, Thomas, and Alexander. *Id.*

12 97. Alexander followed Spaw's directions.

13 98. On Tuesday, January 26, 2010, Alexander asked Spaw for more time to complete
14 her work on her portions of the response to the motions to dismiss. Trial Exhibit. 461.

15 99. Spaw declined and told Alexander that the response would never be "perfect" but
16 that she had done the very best job she could do. *Id.*

17 100. Spaw finalized the response to the motions to dismiss. Trial Exhibit 464.

18 101. Spaw then caused Alexander's name to be typed into the signature line of the
19 response and filed it using his ECF password and login. Trial Exhibit 364.

20 102. Thereafter, the various RICO Defendants filed replies supporting their respective
21 motions to dismiss. *Id.*

22 103. No further activity took place in the RICO Matter. *Id.*

23 104. Throughout the time that Alexander had been involved in the RICO Matter,
24 Thomas and the MCSO had been seeking outside counsel to assume the matter. October 20,
25 2011 Trial Testimony at p. 37, ll. 6-11.

26 105. Eventually, Robert Driscoll, a lawyer with the national firm of Alston & Bird,
27 who had previously done work with the MCSO, agreed to work on the matter. October 27,
28 2011 Trial Testimony at p. 109, l. 9 to p. 110, l. 14.

106. Alexander was not involved in the decision to retain Driscoll. Trial Exhibit 452.

107. Driscoll assumed the representation of the MCSO. *Id.*; Trial Exhibit 364.

108. Driscoll had experience litigating civil RICO matters. October 27, 2011 Trial Testimony at p. 109, l. 6-8; p. 115, ll. 5-15.

109. Driscoll evaluated the RICO Matter and determined that it was a viable case that comported with the rules of ethics. October 27, 2011 Trial Testimony at p. 110, l. 15 to p. 112, l. 1.

110. Thereafter, the decision was made to dismiss the RICO Matter. *Id.* at p. 112, ll. 2-22.

111. Accordingly, the RICO Matter was dismissed on March 11, 2010. Trial Exhibit 364.

112. Alexander was not involved in the decision to dismiss the RICO Matter. Trial Exhibits 484-486.

113. Alexander did not object to the dismissal of the RICO Matter. October 27, 2011 Trial Testimony at p. 115, l. 16 to p. 116, l. 6.

114. During her time working on the RICO Matter, Spaw instructed Alexander not to speak with any of defendants' counsel, telling her that it would best, for the time being, for opposing counsel to deal with only one of them at a time. Trial Exhibit 40; November 1, 2011 Trial Testimony at p. 48, ll. 6-19.

115. Spaw also instructed Rachel not to speak with the MCSO. October 20, 2011 Trial Testimony at p. 58, ll. 2-18; November 1, 2011 Trial Testimony at p. 48, l. 20 to p. 49, l. 3.

116. Although witnesses testified as to harm caused by the RICO Matter, those witnesses testified that any harm they sustained was caused by the filing of the RICO Matter. September 26, 2011 Trial Testimony at p. 183, ll. 17 -23; September 27, 2011 Trial Testimony at p. 34, ll 14-25; p. 35, ll 2-7; p. 36, ll. 11-16; p. 37, ll. 10-16; p. 144, ll. 9-16; p. 145, ll. 16-22; p. 147, ll. 2-25; October 3, 2011 Testimony at at p. 33, ll. 18-25; p. 34, ll. 1-25; p. 35, ll. 1-25; p. 36, ll. 1-25; p. 37, ll. 1-25; p. 38, ll. 1-19; p. 106, ll. 15-25; p. 107, ll. 1-11; p. 110, ll. 19-25; p. 111, ll. 1-5; p. 114, ll. 1-22; p. 115, ll. 1-19; October 4, 2011 Testimony at p. 7-15.

1 117. No witness testified that the way in which the RICO Matter was litigated caused
2 them harm.

3 118. No one, including without limitation Spaw or Thomas, told Alexander that in
4 their opinion, the RICO Matter needed to be immediately dismissed because it lacked a good
5 faith basis in fact or law. November 2, 2011 Trial Testimony, at p. 57, l. 1 to p. 58, l. 24.

6 119. The United States District Court Judge presiding over the RICO Matter, the Hon.
7 Murray Snow, had the power to *sua sponte* sanction any lawyer involved in the RICO Matter.
8 Fed. R. Civ. P. 11.

9 120. Judge Snow did not sanction Alexander nor any other lawyer involved in the
10 RICO Matter. Trial Exhibit 364.

11 **II. CLAIM 15: ALLEGED VIOLATION OF ER 4.4(A).**

12 121. ER 4.4 provides: "In representing a client, a lawyer shall not use means that have
13 no substantial purpose other than to embarrass, delay, or burden any other person, or use
14 methods of obtaining evidence that violate the legal rights of such a person."

15 122. In order to demonstrate that Alexander violated ER 4.4(a), IBC was required to
16 present clear and convincing evidence that Alexander's work on the RICO Matter was driven
17 by a subjective improper purpose.

18 123. In this regard, IBC alleged that Alexander was seeking to punish and/or retaliate
19 against perceived political opponents of Thomas.

20 124. Additionally, IBC was required to prove by clear and convincing evidence that
21 Alexander's work on the RICO Matter had no objective proper purpose.

22 125. In this regard, IBC alleged that Rachel's work on the RICO Matter lacked a
23 proper basis in law and fact.

24 126. IBC has failed to meet its burden of proof that Alexander violated ER 4.4(a).

25 127. Specifically, clear and convincing evidence was not presented that Alexander
26 had a subjective bad purpose that drove her work on the RICO Matter.

27 128. No evidence was presented that Alexander acted in order to retaliate against
28 perceived political opponents of Thomas.

1 129. Further, no evidence was presented that Alexander reasonably believed that the
2 RICO Matter lacked the proper basis in law or fact.

3 130. To the contrary, the evidence demonstrates that Alexander, based on the
4 information she was provided, reasonably believed that the RICO Matter was being pursued
5 for the proper purpose of combating corruption in Maricopa County government.

6 131. Further, the evidence demonstrates that Alexander, based on the information she
7 was provided and the advice and guidance she was given, reasonably believed that the RICO
8 Matter had a proper basis in law and fact.

9 132. Alexander did not violate ER 4.4(a).

10 **III. CLAIM 16: ALLEGED VIOLATION OF ER 3.1.**

11 133. ER 3.1 provides: "A lawyer shall not bring or defend a proceeding, or assert or
12 controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is
13 not frivolous, which may include a good faith and nonfrivolous argument for an extension,
14 modification or reversal of existing law."

15 134. In order to demonstrate that Alexander violated ER 3.1, IBC was required to
16 present clear and convincing evidence that Alexander's work on the RICO Matter lacked an
17 objective good faith basis in law and fact.

18 135. Additionally, IBC was required to present clear and convincing evidence that
19 Alexander's work on the RICO Matter was the result of a subjective improper purpose.

20 136. IBC alleged that Alexander worked on the RICO Matter to punish and/or
21 retaliate against perceived political opponents of Thomas.

22 137. IBC has failed to meet its burden of proof that Alexander violated ER 3.1.

23 138. Specifically, no evidence was presented that Alexander's work on the RICO
24 Matter lacked a proper basis in law or fact.

25 139. To the contrary, the evidence demonstrates that Alexander's work on the RICO
26 Matter was well-founded in law and fact.

27 140. This is particularly true in light of the advice and guidance Alexander received
28 from Spaw, Thomas, and other more experienced attorneys.

1 141. Further, clear and convincing evidence was not presented that Alexander had a
2 subjective improper purpose that drove her work on the RICO Matter.

3 142. No evidence was presented that Alexander acted in order to retaliate against
4 perceived political opponents of Thomas as alleged.

5 143. The evidence demonstrated that Alexander, based on the information she was
6 provided and the advice and guidance she was given, reasonably believed that the RICO
7 Matter had a proper basis in law and fact.

8 144. Alexander did not violate ER 3.1.

9 **IV. CLAIM 17: ALLEGED VIOLATION OF ER 1.1.**

10 145. ER 1.1 provides: "A lawyer shall provide competent representation to a client.
11 Competent representation requires the legal knowledge, skill, thoroughness and preparation
12 reasonably necessary for the representation."

13 146. In order to demonstrate that Alexander violated ER 1.1, IBC was required to
14 prove by clear and convincing evidence that Alexander's work on the RICO Matter was
15 performed without the appropriate skill, preparation, and thoroughness reasonably necessary to
16 successfully perform the tasks to which she was assigned.

17 147. IBC has failed to meet its burden of proof that Alexander violated ER 1.1.

18 148. Clear and convincing evidence was not presented that Alexander reasonably
19 failed to appropriately prepare for and perform the tasks to which she was assigned.

20 149. To the contrary, the evidence demonstrates that Alexander diligently performed
21 the tasks to which she was assigned in light of the advice, guidance, and suggestions that she
22 was given by Spaw, Thomas, and other more experienced lawyers.

23 150. Alexander did not violate ER 1.1.

24 **V. CLAIM 18: ALLEGED VIOLATION OF ER 1.7(A)(1) &(2).**

25 151. ER 1.7 provides, in pertinent part: "(a) ...a lawyer shall not represent a client if
26 the representation involves a concurrent conflict of interest. A concurrent conflict of interest
27 exists if: (1) the representation of one client will be directly adverse to another client; or (2)
28 there is a significant risk that the representation of one or more clients will be materially

1 limited by the lawyer's responsibilities to another client, a former client or a third person or by
2 a personal interest of the lawyer."

3 152. In order to demonstrate that Alexander violated ER 1.7(a)1, IBC was required to
4 prove by clear and convincing evidence that Alexander's work on the RICO Matter
5 represented advocacy on behalf of one her clients against another one of her clients.

6 153. In order to demonstrate that Alexander violated ER 1.7(a)(2), IBC was required
7 to prove by clear and convincing evidence that Alexander's work on the RICO Matter was
8 limited by her supposed animosity towards the various defendants in the RICO Matter.

9 154. IBC concedes that Alexander did not herself represent one client against another
10 while working on the RICO Matter.

11 155. IBC contends, however, that Alexander violated ER 1.7 because alleged conflicts
12 of Thomas and Aubuchon are imputed to her via the provisions of ER 1.10.

13 156. In this regard, IBC contends that every lawyer in the MCAO was precluded from
14 working on the RICO Matter because of Thomas' alleged conflicts.

15 157. The provisions of ER 1.10, however, do not apply to public or government
16 lawyers.

17 158. Instead, imputations of conflicts of interest as to public or government lawyers
18 are controlled by ER 1.11.

19 159. Moreover, public policy dictates that imputations of conflicts be cautiously
20 applied with regard to public or government lawyers.

21 160. Regardless, conflicts are not imputed to other lawyers when an appropriate
22 screening procedure is in place.

23 161. Although it did not have a written procedure, the MCAO has long used a
24 screening procedure to separate its criminal and civil lawyers in order to avoid conflicts of
25 interest.

26 162. Said screening procedure was applied here when Alexander was reassigned from
27 the Executive Division of the MCAO to the Civil Forfeiture Bureau of the MCAO under the
28 supervision of Spaw.

1 163. As a result, even if Thomas and/or Aubuchon had a conflict, ER 1.7(a)(1) did not
2 preclude Alexander from working on the RICO Matter.

3 164. IBC has failed to demonstrate that Alexander violated ER 1.7(a)(1).

4 165. In regard to ER 1.7(a)(2), IBC contends that Alexander's own personal animosity
5 limited her work on the RICO Matter.

6 166. IBC was thus required to present and convincing evidence of the existence of
7 such personal animosity against those RICO Defendants who were also her clients and
8 demonstrate how it limited Alexander's work.

9 167. IBC failed to present clear and convincing evidence that Alexander had such
10 personal animosity, let alone that she had such animosity towards her own clients.

11 168. IBC has also failed to demonstrate how any supposed animosity limited
12 Alexander's work on the RICO Matter.

13 169. IBC has failed to demonstrate that Alexander violated ER 1.7(a)(2).

14 **VI. CLAIM 19: ALLEGED VIOLATION OF ER 3.4(C).**

15 170. ER 3.4.(c) provides that: "A lawyer shall not...(c) knowingly disobey an
16 obligation under the rules of a tribunal except for an open refusal based on an assertion that no
17 valid obligation exists."

18 171. IBC contends that Alexander violated 3.4(c) by predicated the RICO Matter on
19 bar complaints that were made against Thomas by certain defendants in the RICO Matter.

20 172. In this regard, IBC contends that Alexander violated Ariz. Sup. Ct. R. 48(l),
21 which grants immunity from suit to individuals who make a bar complaint.

22 173. In order to demonstrate that Alexander violated ER 3.4, IBC was required to
23 demonstrate by clear and convincing evidence that Alexander's work on the RICO Matter
24 violated Rule 48(l).

25 174. Pursuant to the Supremacy Clause of the United States Constitution and the law
26 applying that clause, state law cannot limit claims arising under federal law.

27 175. As Rule 48(l) is a rule that arises under state law, it has no application to a RICO
28 action which arises under federal law.

1 176. Regardless, in order to prove that Alexander violated ER 3.4(c), IBC was
2 required to prove by clear and convincing evidence that Alexander's work on the RICO Matter
3 was "predicated" on the filing of bar complaints.

4 177. Although the pleadings and filings that Alexander worked on contain the factual
5 allegation that bar complaints were improperly made against Thomas by certain defendants in
6 the RICO Matter, the pleadings and filings that Alexander worked on were not predicated on
7 that allegation.

8 178. Rather, the filing of bar complaints against Thomas was but one fact of many
9 alleged in the various pleadings and filings that Alexander worked on.

10 179. IBC has failed to demonstrate that Alexander violated ER 3.4(c).

11 **VII. CLAIM 29: ALLEGED VIOLATION OF ER 8.4(D).**

12 180. ER 8.4(d) provides: "It is professional misconduct for a lawyer to: (d) engage in
13 conduct that is prejudicial to the administration of justice."

14 181. In order to prove that Alexander violated ER 8.4(d), IBC was required to prove
15 by clear and convincing evidence that Alexander engaged in conduct that resulted in an
16 adverse effect upon the administration of justice.

17 182. In this regard, IBC contended that Alexander's work on the RICO Matter in
18 relation to the various defendants in the RICO Matter who were judges was designed to
19 intimidate and harass the judges in retaliation for rulings they made against Thomas,
20 Aubuchon, and other employees or officials of the MCAO and the MCSO.

21 183. More specifically, IBC contended the Alexander failed to offer a valid basis for
22 the abrogation of judicial immunity.

23 184. IBC failed to offer clear and convincing evidence in this regard.

24 185. In her work on the response to the various motions to dismiss, Alexander
25 recognized the judges' potential entitlement to judicial immunity but presented an argument
26 supported by valid authority as to why that immunity should not be applied.

27 186. IBC also failed to offer clear and convincing evidence that Alexander's work in
28 this regard actually adversely affected the administration of justice.

1 187. IBC has failed to demonstrate that Alexander violated ER 8.4(d).

2 **VIII. CLAIM 33: ALLEGED VIOLATION OF RULE 54.**

3 188. Ariz. Sup. Ct. R. 54 requires, in pertinent part, a lawyer to “cooperate with
4 officials and staff of the state bar” and “to furnish information or respond promptly to any
5 inquiry or request from bar counsel.”

6 189. In order to prove that Alexander violated Rule 54, IBC must prove by clear and
7 convincing evidence that Alexander did not cooperate with IBC in a timely manner.

8 190. In this regard, IBC contends that because Alexander joined in or filed various
9 motions challenging the screening investigation being conducted into this matter or the actions
10 of IBC, that Alexander failed to cooperate.

11 191. Alexander and all the respondents in this matter have the right to due process
12 during a screening investigation and all other phases of a disciplinary proceeding.

13 192. The exercise of those due process rights does not, in and of itself, demonstrate a
14 failure to cooperate with IBC in violation of Rule 54.

15 193. The evidence confirms that, while Alexander was challenging certain actions, she
16 was, at the same time, cooperating with IBC and its investigation.

17 194. IBC has failed to demonstrate that Alexander violated Rule 54.

18 **IX. CONCLUSION.**

19 195. IBC has not demonstrated by clear and convincing evidence that Alexander
20 violated any rule of ethics or rule of the Supreme Court of Arizona.

21 196. Consequently, no discipline is warranted or appropriate.

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23 ///

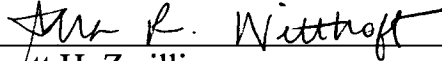
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1 DATED this 19th day of January, 2012.

2 **ZWILLINGER GREEK ZWILLINGER &**
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9 ORIGINAL filed with the Disciplinary
10 Clerk of the Supreme Court of Arizona
this 19th day of January, 2012.

11 Honorable William J. O'Neil
12 Presiding Disciplinary Judge
13 Supreme Court of Arizona
14 1501 W. Washington, Suite 104
15 Phoenix, Arizona 85007
16 Email: officepdj@courts.az.gov
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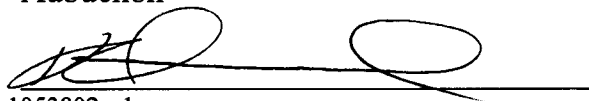
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